



VILLAGE OF KEY BISCAYNE

Village Council

Robert Oldakowski, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Martha Fdez-León Broucek
Carol Diaz-Castro
Mortimer Fried
James L. Peters
Robert L. Vernon

Memorandum

DATE : November 24, 2003

TO: Honorable Mayor and Members of the Village Council

FROM: Jacqueline R. Menendez, Village Manager

RE: Adoption of Lobbying Ordinance

RECOMMENDATION

The Village Attorney has prepared the enclosed proposed Ordinance which adopts the provisions of the recently amended Miami-Dade County Lobbying Ordinance. The County Lobbying Ordinance defines the terms "Lobbying" and "Lobbyist," provides for Lobbyist registration requirements, imposes requirements upon Lobbyists to report their expenditures, prohibits Lobbyists from accepting contingent fees and otherwise regulates lobbying activities. The adoption of this Ordinance will serve to facilitate uniformity of lobbyist registration and regulation throughout the many municipalities of Miami-Dade County, Florida.

BACKGROUND

The Miami-Dade County Commission has recently comprehensively revised the County Lobbyist Ordinance as set forth in Section 2-11.1(s) of the County Code. The staff of the County Ethics Commission has recommended that the revised County Lobbying Ordinance be adopted and followed by the municipalities within the County. The Village Attorney has prepared the enclosed proposed Ordinance so that the Village may adopt and follow the County Lobbying Ordinance. The proposed Village Ordinance utilizes a modified form of Lobbyist registration fees as set forth in the proposed Ordinance. The staff of the County Ethics Commission recognizes the authority of municipalities to impose their own Lobbyist fee structures as a part of a lobbying ordinance. Please contact the Village Attorney if there are any questions on this matter.

cc: Village Clerk
Village Attorney

103001\memos\mayor and council from menendez re adoption of lobbying ordinance 11.24.03

ORDINANCE NO. 2004-

AN ORDINANCE OF VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY CREATING ARTICLE IX "LOBBYING" CONSISTING OF SECTION 2-161 "LOBBYISTS" OF CHAPTER 2 "ADMINISTRATION," ADOPTING SECTION 2-11.1(S) OF THE MIAMI-DADE COUNTY CODE CONCERNING LOBBYING, AS MODIFIED HEREIN; PROVIDING FOR RELATED FEES AND OTHER PROVISIONS CONCERNING LOBBYISTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Miami-Dade County (the "County") Commission has recently comprehensively revised the County lobbyist ordinance (the "County Lobbying Ordinance") as set forth in Section 2-11.1(s) of the Miami-Dade County Code (the "County Code"); and

WHEREAS, the staff of the County Ethics Commission has recommended that the revised County Lobbying Ordinance be adopted and followed by municipalities within the County; and

WHEREAS, the Village Council desires to adopt and follow the provisions of the County Lobbying Ordinance, as described herein, along with the modifications and other requirements specified herein.

IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by creating Article IX "Lobbying" consisting of Section 2-161, "Lobbyists" of Chapter 2 "Administration," to read as follows:

ARTICLE IX - LOBBYING

Section 2-161. Lobbyists.

The provisions of Section 2-11.1(s) "Lobbying," of the Miami-Dade County Code (the "County Lobbying Ordinance") as it currently exists, as set forth in Exhibit "A" attached hereto and incorporated herein, are hereby adopted and shall apply within the Village of Key Biscayne, except that in lieu of the fee for annual lobbyist registration which is specified by Section 2-11.1(s)(2)(b) of the County Lobbying Ordinance, the fee payable to the Village for registration of each lobbyist for the representation of each principal of the lobbyist shall be One Hundred (\$100.00) Dollars (per principal represented), and the fee payable to Village for annual lobbyist registration for each lobbyist shall be Two Hundred (\$200.00) Dollars. References in the County Lobbying Ordinance to County personnel shall be deemed to be references to Village personnel who serve in comparable capacities to the County personnel referred to. References in the County Lobbying Ordinance to the County Commission or to a "County board or committee" shall be deemed to be references to the Village Council or to the Village's boards, as applicable.

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** That it is the intention of the Village Council, and it

is hereby ordained that the provisions of this Ordinance shall become and made a part of the Village of Key Biscayne Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this _____ day of _____, 2004.

PASSED AND ADOPTED on second reading this ____ day of _____, 2004.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

Inspector General shall verify the accuracy of each affidavit executed by former county officers, departmental personnel or employees.

- (5) Any individual who is found to be in violation of this Subsection (q) shall be subject to the penalties provided in either Subsection (u)(1) or Subsection (u)(2). (Ord. No. 72-82, § 1, 11-21-72; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 99-2, § 1, 1-21-99)

(r) *Ethics Commission to render opinions on request.* Whenever any person included in the terms defined in subsection (b)(1) through (6) and subsection (b)(9) is in doubt as to the proper interpretation or application of this conflict of interest and Code of Ethics Ordinance as to himself or herself, or whenever any person who renders services to the County is in doubt as to the applicability of the said ordinance as to himself or herself, he or she may submit to the Ethics Commission a full written statement of the facts and questions he or she has. The Ethics Commission shall then render an opinion to such person and shall publish these opinions without use of the name of the person advised unless such person requests the use of his or her name. (Ord. No. 73-26, § 1, 3-20-73; Ord. No. 77-13, § 4, 3-1-77; Ord. No. 97-105, § 2, 7-8-97)

→ (s) *Lobbying.*

- (1) (a) As used in this section, "County personnel" means those County officers and employees specified in Section 2-11.1(i)(2) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.
- (b) As used in this section, "Lobbyist" means all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-

making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities. The term "Lobbyist" specifically excludes the following persons: attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings; any person who only appears as a representative of a neighborhood association without compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item; any person who only appears as a representative of a not-for-profit community based organization for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and employees of a principal whose normal scope of employment does not include lobbying activities.

- (2) All lobbyists shall register with the Clerk of the Board of County Commissioners within five (5) business days of being retained as a lobbyist or before engaging in any lobbying activities, whichever shall come first. Every person required to so register shall:
- (a) Register on forms prepared by the Clerk;
- (b) State under oath his or her name, business address and the name and business address of each person or entity which has employed said reg-

ADMINISTRATION

§ 2-11.1

istrant to lobby. If the lobbyist represents a corporation, the corporation shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five (5) percent or more ownership interest in such corporation, partnership, or trust. Registration of all lobbyists shall be required prior to January 15 of each year and each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal. The fee for annual registration shall be four hundred and ninety dollars (\$490.00). Every registrant shall be required to state the extent of any business or professional relationship with any current person described in subsection (b)(1). The registration fees required by this subsection shall be deposited by the Clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal and the Board of County Commissioners may, in its discretion, waive the registration fee upon a finding of financial hardship.

- (c) Prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the Clerk of the Board at the

point in time at which a lobbyist is no longer authorized to represent the principal.

- (3) (a) Any public officer, employee or appointee who only appears in his or her official capacity shall not be required to register as a lobbyist.
- (b) Any person who only appears in his or her individual capacity for the purpose of self-representation without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item, shall not be required to register as a lobbyist.
- (4) Any person who only appears as a representative of a not-for-profit corporation or entity (such as a charitable organization, or a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item, shall register with the Clerk as required by this subsection, but, upon request, shall not be required to pay any registration fees.
- (5) Any person who appears as a representative for an individual or firm for an oral presentation before a county certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed by staff with the Clerk's office at the time the proposal is submitted. For the purpose of this subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Clerk's office and has paid all applicable fees.
- (6) (a) Commencing July 1, 1986, and on July 1 of each year thereafter, the

lobbyist shall submit to the Clerk of the Board of County Commissioners a signed statement under oath, as provided herein, listing all lobbying expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. A statement shall be filed even if there have been no expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.

- (b) The Clerk of the Board of County Commissioners shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed as provided in subsection (s)(9), a fine of fifty dollars (\$50.00) per day shall be assessed for reports filed after the due date. Where a fine of fifty dollars (\$50.00) per day is assessed, the Ethics Commission shall not impose a fine as provided in subsection (z). Any lobbyist who fails to file the required expenditure report by September 1st shall be automatically suspended from lobbying until all fines are paid unless the fine has been appealed to the Ethics Commission.
- (c) The Clerk of the Board of County Commissioners shall notify the Commission on Ethics and Public Trust of the failure of a lobbyist or principal to file a report and/or pay the assessed fines after notification.
- (d) A lobbyist or principal may appeal a fine and may request a hearing before the Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Commission on Ethics and Public Trust within fifteen (15) calendar days of receipt of the notification of the failure to file the required disclo-

sure form. The Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or part, based on good cause shown. The Commission on Ethics and Public Trust shall have the authority to adopt rules of procedure regarding appeals from the Clerk of the Board of County Commissioners.

- (7) No person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the County Commission; (2) any action, decision or recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee.
- (8) The Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection (s). All logs required by this ordinance shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to Section 11.045, Florida Statutes.
- (9) The Ethics Commission shall investigate any person engaged in lobbying activities who may be in violation of this subsection (s). In the event that a violation is found to have been committed the Ethics Commission may, in addition to the penalties set forth in subsection (z), prohibit such person from lobbying before the County Commission or any committee, board or personnel of the County as provided herein.

Ex. "A".

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ADMINISTRATION

§ 2-11.1

Every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

1st violation for a period of 90 days from the date of determination of violation;

2nd violation for a period of one (1) year from the date of determination of violation;

3rd violation for a period of five (5) years from the date of determination of violation;

A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or proposer has violated this section, either directly or indirectly or any combination thereof, on three (3) or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this section shall also render the contract voidable. The County Manager shall include the provisions of this subsection in all County bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of such failure illegal per se.

- (10) All members of the County Commission, and all County personnel, shall be diligent to ascertain whether persons required to register pursuant to this subsection have been complied. Commissioners or County personnel may not knowingly permit a person who is not registered pursuant to this subsection to lobby the Commissioner, or the relevant committee, board or County personnel.
- (11) Except as otherwise provided in subsection (s)(9), the validity of any action or determination of the Board of County Commissioners or County personnel, board

or committee shall not be affected by the failure of any person to comply with the provisions of this subsection(s).

(Ord. No. 00-19, § 1, 2-8-00; Ord. No. 01-93, § 1, 5-22-01; Ord. No. 01-162, § 1, 10-23-01) (03-107)

(t) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefor. The County Manager and the Chairperson of the selection committee may